

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1937-AIR-E TCEQ ID: RN100817147 CASE NO.: 35012
RESPONDENT NAME: Wyler Industrial Works, Inc.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Wyler Industrial Works, 711 South Saint Vrain Street, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Machine shop that dispenses fuel for motor vehicle use</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Libby Hogue, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-1165; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Fred Duvall III, President, Wyler Industrial Works, Inc., 711 South Saint Vrain Street, El Paso, Texas 79901 Mr. D. T. Romo, Chief Financial Officer, Wyler Industrial Works, Inc., 711 South Saint Vrain Street, El Paso, Texas 79901 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 10, 2007</p> <p>Date of NOV/NOE Relating to this Case: November 16, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failed to ensure the gasoline sold as motor vehicle fuel in El Paso County, during the control period of October 1, 2006 through March 31, 2007, contained a minimum of 2.7% oxygen by weight. Specifically, lab results on gasoline sampled by the TCEQ on October 10, 2007, indicated the oxygen content to be 2.0% by weight for the sample taken from pump number one [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$920</p> <p>Total Deferred: \$184 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$736</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent's gasoline from pump number one was tested on December 4, 2007 and contained a minimum of 2.7% oxygen by weight.</p>

Additional ID No(s): EE06990



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

TCEQ

DATES

Assigned 26-Nov-2007

PCW 28-Nov-2007

Screening 27-Nov-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Wyler Industrial Works, Inc.

Reg. Ent. Ref. No. RN100817147

Facility/Site Region 6-El Paso

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 35012

Docket No. 2007-1937-AIR-E

Media Program(s) Air

Multi-Media

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 1

Order Type 1660

Enf. Coordinator Libby Hogue

EC's Team Enforcement Team 3

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 2% Enhancement

Subtotals 2, 3, & 7 \$20

Notes A 2% enhancement is recommended for having one NOV for non-similar violations within the past five years.

Culpability No 0% Enhancement

Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction

Subtotal 5 \$100

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent came into compliance on December 4, 2007, after the Notice of Enforcement was issued.

0% Enhancement*

Subtotal 6 \$0

*Capped at the Total EB \$ Amount

Total EB Amounts	\$1
Approx. Cost of Compliance	\$100

SUM OF SUBTOTALS 1-7

Final Subtotal \$920

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$920

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$920

DEFERRAL

20%

Reduction

Adjustment

-\$184

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$736

Screening Date 27-Nov-2007

Docket No. 2007-1937-AIR-E

PCW

Respondent Wyler Industrial Works, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35012

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN100817147

Media [Statute] Air

Enf. Coordinator Libby Hogue

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

A 2% enhancement is recommended for having one NOV for non-similar violations within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 27-Nov-2007

Docket No. 2007-1937-AIR-E

PCW

Respondent Wyler Industrial Works, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35012

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN100817147

Media [Statute] Air

Enf. Coordinator Libby Hogue

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to ensure the gasoline sold as motor vehicle fuel in El Paso County, during the control period of October 1, 2006 through March 31, 2007, contained a minimum of 2.7% oxygen by weight. Specifically, lab results on gasoline sampled by the TCEQ on October 10, 2007, indicated the oxygen content to be 2.0% by weight for the sample taken from pump number one.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels protective of human health and the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

55 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$920

This violation Final Assessed Penalty (adjusted for limits) \$920

Economic Benefit Worksheet

Respondent Wylor Industrial Works, Inc.
Case ID No. 35012
Reg. Ent. Reference No. RN100817147
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	1-Oct-2007	4-Dec-2007	0.2	\$1	n/a	\$1

Notes for DELAYED costs

This amount represents the estimated cost of providing sufficient oversight that fuel sold met the 2.7% by weight oxygen content. Date required is the start date of the 2.7% oxygen requirement regulation period and the final date is the date the Respondent achieved compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator: CN600499818 Wyler Industrial Works, Inc. Classification: AVERAGE Rating: 0.22

Regulated Entity: RN100817147 WYLER INDUSTRIAL WORKS Classification: AVERAGE Site Rating: 0.22

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 24256

Location: 711 S SAINT VRAIN ST, EL PASO, TX, 79901 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: November 26, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 19, 2002 to November 19, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Libby Hogue Phone: 512-239-1165

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 12/12/2002 | (18846) |
| 2 | 10/22/2003 | (252555) |
| 3 | 07/26/2004 | (281866) |
| 4 | 10/28/2004 | (339051) |
| 5 | 02/24/2006 | (456901) |
| 6 | 07/06/2006 | (485086) |
| 7 | 11/17/2006 | (519776) |
| 8 | 07/05/2007 | (566807) |
| 9 | 11/12/2007 | (600608) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|-----------------------|
| Date: | 02/24/2006 | (456901) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C) | | |
| Description: | Failure to number all tanks according to their registration/self-certification form. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |
| Description: | Failure to amend registration & Self-Certification Form. | | |
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WYLER INDUSTRIAL WORKS, INC.
RN100817147**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1937-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Wyler Industrial Works, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a machine shop that dispenses fuel for motor vehicle use at 711 South Saint Vrain Street in El Paso, El Paso County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Hundred Twenty Dollars (\$920) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Thirty-Six Dollars (\$736) of the administrative penalty and

One Hundred Eighty-Four Dollars (\$184) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent's gasoline from pump number one was tested on December 4, 2007 and contained a minimum of 2.7% oxygen by weight.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to ensure the gasoline sold as motor vehicle fuel in El Paso County, during the control period of October 1, 2006 through March 31, 2007, contained a minimum of 2.7% oxygen by weight, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 10, 2007. Specifically, lab results on gasoline sampled by the TCEQ on October 10, 2007, indicated the oxygen content to be 2.0% by weight for the sample taken from pump number one.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

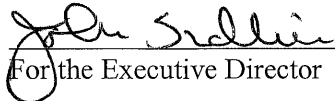
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Wyler Industrial Works, Inc., Docket No. 2007-1937-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/26/2008

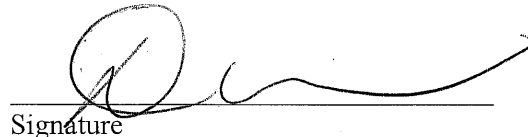
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

2/14/08

Date

Sr. Romo, CFO

Name (Printed or typed)
Authorized Representative of
Wyler Industrial Works, Inc.

Chief Financial Officer

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

RECEIVED

JAN 21 2008

Wyler Industrial Works, Inc.

